

ADMINISTRATIVE PANEL DECISION

ELO v. mailly rolland, alfagomma france

Case No. D2022-2801

1. The Parties

The Complainant is ELO, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is mailly rolland, alfagomma france, France¹.

2. The Domain Name and Registrar

The disputed domain name <auchan-polska.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 29, 2022. On July 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 4, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2022. The Respondent did not submit any formal response. The Respondent sent an informal communication to the Center on August 3, 2022. Accordingly, the Center notified the parties that it would proceed to panel appointment on August 26, 2022.

¹ The Complaint was originally filed against “Redacted for Privacy - Privacy Service Provided by Withheld for Privacy ehf”, a privacy service found in the publicly available Whois details for the disputed domain name. The identity of the Respondent was subsequently disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name. The amended Complaint lists the person disclosed by the Registrar as the sole Respondent.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on September 7, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French company, founded in 1960, which has grown internationally to become the 11th largest food retailer in the world, with over 350,000 employees operating in 17 countries, and a turnover in 2020 of EUR 32 billion.

The disputed domain name does not resolve to an active website at the time of this decision.

The disputed domain name was initially registered in the name of a proxy service. The identity of the Respondent was disclosed by the Registrar in response to the Center's request for registrar verification in connection with the disputed domain name.

The Complainant has submitted forensic evidence that the Respondent sent fraudulent emails to a third party in view of ordering their products, thus engaging in a phishing scheme.

The Complainant owns a large portfolio of registered trademarks containing the trademark AUCHAN, including, *inter alia*, the International trademark registration No. 284616, registered on June 5, 1964, and the European Union trademarks No. 000283101, registered on August 19, 2005, and No. 004510707, registered on January 19, 2007 (together hereinafter referred to as "the Mark").

The Complainant also owns numerous domain names, including the <auchan-retail.com> domain name, registered on October 27, 2015.

The disputed domain name, <auchan-polska.com>, was created on June 23, 2022.

5. Parties' Contentions

A. Complainant

(i) The Complainant alleges that it was previously known as Auchan Holding SA, and submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the element "auchan" in its entirety, and that the addition of a hyphen and the element "polska" ("Poland" in Polish) is not capable of dispelling the confusing similarity.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.

(iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not submit a formal response.

6. Discussion and Findings

6.1. Procedural Aspects

A. Failure to respond formally

As aforementioned, no formal Response was received from the Respondent.

The Respondent merely sent an email on August 3, 2022 to the Center, declaring that it is the owner of the disputed domain name and requesting to “unlock our domain for further work”.

Under the Rules, paragraphs 10(d), the Panel has to determine the admissibility, relevance, materiality and weight of any evidence.

The Panel accordingly finds that the communication from the Respondent is admissible and is materially relevant as recognition of ownership of the disputed domain name but that it carries no weight as evidence of any material argument objecting to the Complainant’s contentions.

As a consequence, the Respondent did not reply to the Complainant’s contentions.

Under paragraph 4(a) of the Policy, it is the Complainant’s burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent’s absence of a reply to the Complainant’s contentions as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the absence of a reply to the Complainant’s contentions, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by failing to respond and address the Complainant’s contentions, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant’s arguments that the Respondent has acted in bad faith.

B. Complainant’s standing to file a UDRP complaint

The Complainant has not provided any document supporting its allegation that it was previously known as Auchan Holding.

The Respondent, as aforesaid, has not rebutted such allegation.

The Panel, further to accessing publicly available corporate information (see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)), has ascertained that Minutes dated March 11, 2021 have been filed, relating to a resolution to change the corporate name of Auchan Holding to ELO and to modify accordingly the company’s by-laws.

The Panel therefore accepts that the Complainant has standing to file a UDRP complaint, based on the

ownership of trademark rights.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name, it is evident that the latter consists of the Mark, followed by a hyphen, the geographic term “polska” and by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. See section 1.11 of the [WIPO Overview 3.0](#).

The Panel finds that the disputed domain name is confusingly similar to the Mark, which is incorporated in its entirety, and that the addition of the “polska” element in the disputed domain name does not prevent a finding of confusing similarity, the Mark remaining recognizable within the disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once a complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#) and section 2.1 of the [WIPO Overview 3.0](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name.

There is no evidence that the Respondent is known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business.

The disputed domain name does not direct the public to any active website.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant, (ii) received no authorization from the Complainant to register or use the disputed domain name and (iii) the disputed domain name has been used in a fraudulent email scheme, to impersonate one of the Complainant’s employees. The Panel finds that such use cannot give rise to rights or legitimate interests in the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Complainant’s trademark in its entirety in combination with the additional term “polska” and the gTLD “.com”, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Third, it is established in prior UDRP decisions that where a respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, considering the fact that the Mark is wellknown, as prior UDRP panels have confirmed (see for instance *Auchan Holding v. Alvaro Romon Sancho*, WIPO Case No. [D2016-0187](#) and *Elo v. Chao Yue*, WIPO Case No. [D2021-1180](#)), the Panel finds that it is highly unlikely that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

Furthermore, section 3.1.4 of the [WIPO Overview 3.0](#), states that evidence that a disputed domain name has been used for phishing purposes may be considered evidence of bad faith use. The Complainant provided evidence that phishing emails using the disputed domain name were sent, purportedly signed by an employee of the Complainant. The Panel draws from these circumstances an inference of bad faith registration and use of the disputed domain name by the Respondent.

In addition, in this case, the Respondent took active steps to hide its identity. Although using a proxy service to hide the identity of the registrant is not *per se* conclusive of bad faith registration and use (see *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#)), the Panel notes that the fact that the Respondent used a proxy service to hide its identity and contact details prevented the Complainant from contacting it. Prior UDRP panels have held that deliberate concealment of identity and contact information may in certain circumstances be indicative of registration in bad faith (see *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#), and *Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#)). See section 3.2.1 of the [WIPO Overview 3.0](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <auchan-polska.com>, be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: September 20, 2022